

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

	X
IN RE SEPTEMBER 11 LITIGATION	:
	21 MC 97 (AKH)
	:
	21 MC 101 (AKH)
	X
THIS DOCUMENT APPLIES TO ALL CASES	:
	:
	X

**PLAINTIFFS' DECLARATION IN OPPOSITION TO
MOTIONS TO DETERMINE THE APPLICABLE STANDARD OF CARE**

ROBERT A. CLIFFORD, GREGORY P. JOSEPH, MARC S. MOLLER,
RONALD L. MOTLEY, and RICHARD A. WILLIAMSON, attorneys admitted to
practice law before this Court, declare pursuant to 28 U.S.C. § 1746 under the penalties
of perjury under the laws of the United States that the following is true and correct:

1. We are appointed representatives for the Personal Injury and Wrongful Death
Plaintiffs, Property Damage and Business Loss Plaintiffs, and World Trade Center
Properties Cross-Claim Plaintiffs (collectively, "Plaintiffs"). We submit this declaration
in order to place certain documents before the Court that are referred to in Plaintiffs'
Memorandum of Law in Opposition to Defendants' Motions to Determine the Applicable
Standard of Care.

2. Attached as Exhibit 1 hereto is a true and correct copy of Plaintiffs'
Minimum Standards Chart.

3. Attached as Exhibit 2 hereto is a true and correct copy of Brief for Air
Transport Assoc. of Am., *et al.*, as *Amici Curiae* Supporting Petitioner *Eastern
Associated Coal Corp. v. United Mine Workers of Am. Dist. 17*, 531 U.S. 57 (2000) (No.
99-1038), 2000 WL 719555.

4. Attached as Exhibit 3 hereto is a true and correct copy of WTCP Cross-Claim Plaintiffs Amended Cross-Claims Against Certain Defendants in Plaintiffs' Amended Flight 11 Master Liability Complaint.

5. Attached as Exhibit 4 hereto is a true and correct copy of excerpts from the Federal Aviation Administration Handbook 8400.10 CHG 10 at 1-59 (Dec. 20, 1994).

6. Attached as Exhibit 5 hereto is a true and correct copy of Brief of Western Air Lines, Inc., *Western Air Lines, Inc. v. Criswell*, No.83-1545, 1984 WL 565638 (Nov. 15, 1984).

7. Attached as Exhibit 6 hereto is a true and correct copy of the Brief of Am. Airlines, Inc. as *Amici Curiae* Supporting Petitioner in *Western Air Lines, Inc. v. Criswell*, 472 US 400 (1985) (No. 83-1545), 1984 WL 565645.

8. Attached as Exhibit 7 hereto is a true and correct copy of the Brief of Delta Air Lines, Inc. as *Amici Curiae* Supporting Petitioner in *Western Air Lines, Inc. v. Criswell*, No. 472 US 400 (1985) (No. 83-1545), 1984 WL 565650.

9. Attached as Exhibit 8 hereto is a true and correct copy of excerpts from the Federal Aviation Administration Handbook, 8300.10 CHG 9 at 6-5-6-7 (Aug. 13, 1993); 8700.1 CHG 16 at 2-1 (Oct. 22, 1997).

10. Attached as Exhibit 9 hereto is a true and correct copy of excerpts from the Massport Airport Security Program, § V-1.

11. Attached as Exhibit 10 hereto is a true and correct copy of excerpts from the Checkpoint Operations Guide, Preface, §§ 5-7, 6-1, 6-2, 6-15, 6-22.

12. Attached as Exhibit 11 hereto is a true and correct copy of excerpts from the Air Carrier Standard Security Program, § IIIB, Appendix I, II.1.a., 139m, 4.f., 132-33.

13. Attached as Exhibit 12 hereto is a true and correct copy of the March 13, 1996 letter from Cathal L. Flynn, FAA Associate Administrator for Civil Aviation Security, to Robert Ellis Smith of *Privacy Journal* at XC 091606.

14. Attached as Exhibit 13 hereto is a true and correct copy of the Statement of Jane F. Garvey, FAA Administrator, before the Committee on Transportation and Infrastructure Subcommittee on Aviation on the Deployment and Use of Security Equipment (Oct. 11, 2001).

15. Attached as Exhibit 14 hereto is a true and correct copy of a July 2001 letter from Federal Aviation Administration Associate Administrator for Civil Aviation Security, Michael Canavan, to Alaska Airlines Flight Attendant, Ginny Cavins.

16. Attached as Exhibit 15 hereto is a true and correct copy of the Federal Aviation Administration Comments accompanying adoption of SFAR on flight crew training at 55 FR 40262, 40271 (Oct. 2, 1990).

17. Attached as Exhibit 16 hereto is a true and correct copy of the FAA Order 2150.3A, Compliance and Enforcement Program at TSA3269, 3271.

18. Attached as Exhibit 17 hereto is a true and correct copy of the Restatement (Second) of Torts § 288C (2006).

19. Attached as Exhibit 18 hereto is a true and correct copy of Brief of Appellees Trans World Airlines, *Williams v. Trans World Airlines*, No. 74-1469 (2d Cir. Mar. 28, 1975).

20. Attached as Exhibit 19 hereto is a true and correct copy of a printout from the Federal Aviation Administration's website as of September 11, 2001 entitled *Civil Aviation Security Passenger Information: Frequently Asked Questions* at XC116510-14.

21. Attached as Exhibit 20 hereto is a true and correct copy of the excerpts of the Pre-Departure Screening, Skycap and Other Services, General Terms Agreement between US Air, Inc. and Globe Aviation Services Corp. (January 17, 1997).

22. Attached as Exhibit 21 hereto is a true and correct copy of a letter from American Airlines to Janet Riffe at the Federal Administration (April 6, 2001) at AALTSA002050-54.

23. Attached as Exhibit 22 hereto is a true and correct copy of the Air Transport Association Airline Handbook, Chapter 6: Safety at XC084408-14.

24. Attached as Exhibit 23 hereto is a true and correct copy of excerpts from Huntleigh's CSS Enhanced Training Instructor's Guide at HUSA000845, 898-99.

25. Attached as Exhibit 24 hereto is a true and correct copy of the Preboard Screening Agreement between United Airlines and Huntleigh USA Corp at H040832-854.

26. Attached as Exhibit 25 hereto is a true and correct copy of excerpts of the Slide Presentation, *Roles and Responsibilities of Principal Security Inspector*, by Annmarie Avila, Principal Security Inspector for U.S. Airways, Federal Aviation Administration at US001932.

27. Attached as Exhibit 26 hereto is a true and correct copy of excerpts from US Airways *Ground Security Coordinator Initial Training*, August 21, 22 & 23, 2001 at US-001981, 2041, 2043, 2143, 2424, 2426, 2480, 2506.

28. Attached as Exhibit 27 hereto is a true and correct copy of excerpts from US Airways' Customer Service Testing/Training Document (SABRE) at US002653,

2661-62 2684 (June 15, 1999), noting that correct answer at US 2662 is A (from "Match 452" "Text 452".

29. Attached as Exhibit 28 hereto is a true and correct copy of excerpts from the Deposition Transcript of Lewis Lassiter.

30. Attached as Exhibit 29 hereto is a true and correct copy of excerpts from the Deposition Transcript of Dan Boelsche.

31. Attached as Exhibit 30 hereto is a true and correct copy of excerpts from the Deposition Transcript of Hermie Miller.

32. Attached as Exhibit 31 hereto is a true and correct copy of excerpts from the Deposition Transcript of Susan Simmons.

33. Attached as Exhibit 32 hereto is a true and correct copy of excerpts from the Deposition Transcript of Gail Moona-Nevulis.

34. Attached as Exhibit 33 hereto is a true and correct copy of excerpts from the Deposition Transcript of Larry Wansley

35. Attached as Exhibit 34 hereto is a true and correct copy of excerpts from the Deposition Transcript of Doreen Carbone.

36. Attached as Exhibit 35 hereto is a true and correct copy of excerpts from the Deposition Transcript of Gladys Willis.

37. Attached as Exhibit 36 hereto is a true and correct copy of excerpts from the Deposition Transcript of Robert Hudspeth.

38. Attached as Exhibit 37 hereto is a true and correct copy of excerpts from the Deposition Transcript of Virginia Buckingham.

39. Attached as Exhibit 38 hereto is a true and correct copy of excerpts from the Deposition transcript of Edmond Soliday, United Airlines.

40. Attached as Exhibit 39 hereto is a true and correct copy of the United Airlines Ground Support Employment Application at UAL003368, 3372.

41. Attached as Exhibit 40 hereto is a true and correct copy of excerpts from the United Airlines Corporation 1997 Annual Report, XC090985-091035.

42. Attached as Exhibit 41 hereto is a true and correct copy of excerpts from the United Airlines Flight Operations Manual at XC129768.

43. Attached as Exhibit 42 hereto is a true and correct copy of excerpts from Huntleigh Screener Policy and Procedure Manual, HUSA001276.

44. Attached as Exhibit 43 hereto is a true and correct copy of excerpts from the Deposition Transcript of Jimmy Delgado at 38-44.

45. Attached as Exhibit 44 hereto is a true and correct copy of excerpts from Report of Special Advisory Task Force on Massport, presented to Gov. Swift, December 4, 2001.

46. Attached as Exhibit 45 hereto is a true and correct copy of the Remarks of Virginia Buckingham to the Joint Committee on Transportation Security Oversight Hearing (Oct. 23, 2001).

47. Attached as Exhibit 46 hereto is a true and correct copy of excerpts from the CTI Report, retained by Massport to audit airport security, MP100646, 647.

48. Attached as Exhibit 47 hereto is a true and correct copy of Cliff Edwards, *United Airlines Imposes Tight Security*, Philadelphia Inquirer (July 24, 1996).

49. Attached as Exhibit 48 hereto is a true and correct copy of excerpts of the Presentation of Massport Public Safety Director Joseph Lawless, at MP103312, MP103391, MP103413, MP 103454 and MP103460.

50. Attached as Exhibit 49 hereto is a true and correct copy of a letter from Tom Kinton, Massport's Director of Aviation, to Chip Barclay, President of American Association of Airport Executives (September 25, 2001).

51. Attached as Exhibit 50 hereto is a true and correct copy of Virginia Buckingham's October 25, 2001 Statement.

52. Attached as Exhibit 51 hereto is a true and correct copy of excerpts from the Deposition transcript of Huntleigh CEO, Joesph Tuero.

53. Attached as Exhibit 52 hereto is a true and correct copy of excerpts from the Deposition Transcript of Huntleigh Trainer William J. Bourque.

54. Attached as Exhibit 53 hereto is a true and correct copy of excerpts from the Deposition Transcript of Carolyn Demarco, at 222-23.

55. Attached as Exhibit 54 hereto is a true and correct copy of an article *Security Measures Affect Travelers*, New Orleans Times Picayune (Aug. 18, 1996).

56. Attached as Exhibit 55 hereto is a true and correct copy of an article by Sara Olkon, *More American Travelers Experience Searches as Airport Security Tightens*, Wall Street Journal, Sept. 18, 1995 at A13.

57. Attached as Exhibit 56 hereto is a true and correct copy of excerpts from the National Research Council Report: *Airline Passenger Security Screening: New Technologies and Implementation Issues* (1996).

58. Attached as Exhibit 57 hereto is a true and correct copy of the Air Transport Association Press Release, *Airlines Support President on Security* (July 25, 1996).

59. Attached as Exhibit 58 hereto is a true and correct copy of excerpts of the FAR 108 PowerPoint Presentation, January 1997.

60. Attached as Exhibit 59 hereto is a true and correct copy of the *Airlines Support Gore Commission Report* (Feb. 12, 1997).

61. Attached as Exhibit 60 hereto is a true and correct copy of Remarks Prepared for Barry L. Valentine, Acting Administrator of the Federal Aviation Administration, Before the House Committee on Transportation and Infrastructure Subcommittee on Aviation (May 15, 1997).

62. Attached as Exhibit 61 hereto is a true and correct copy of Remarks of Carol B. Hallett, President of the Air Transport Association, to the World Aviation Conference, Anaheim, California (Oct. 14, 1997).

63. Attached as Exhibit 62 hereto is a true and correct copy of an article *United Airlines to Add Cockpit Security*, National Tour Association, Sept. 3, 2004.

64. Attached as Exhibit 63 hereto is a true and correct copy of excerpts of the September 20, 2000 Delta Audit Report, Portland International Jetport, at Delta 002.

65. Attached as Exhibit 64 hereto is a true and correct copy of excerpts from the American Airlines Level III Security APPS Enhancement at AAL006236.

66. Attached as Exhibit 65 hereto is a true and correct copy of excerpts from Huntleigh USA Corporation's PBS/CSS Recurrent Training Memorandum (May 1, 2001) at HUSA00235.

67. Attached as Exhibit 66 hereto is a true and correct copy of a June 4, 2001 letter from Joseph M. Lawless, Massport Director of Public Safety, to Michael A. Canavan, Associate Administrator for Civil Aviation Security.

68. Attached as Exhibit 67 hereto is a true and correct copy of excerpts from the September 11, 2001 FAA Civil Aviation Security interview notes at Dulles Airport, at TSA0542.

69. Attached as Exhibit 68 hereto is a true and correct copy of the TSA CAPP System Documents.

70. Attached as Exhibit 69 hereto is a true and correct copy of excerpts from the Jury Instructions in *Rein v. Pan Am (Lockerbie)* action at 6559-60.

71. Attached as Exhibit 70 hereto is a true and correct copy of an article by John Hilkevitch, *Airline is Adding to Cockpit Security*, Chicago Tribune (Sept. 1, 2004).

72. Attached as Exhibit 71 hereto is a true and correct copy of a July 24, 1987 letter from GAO to Hon. Elizabeth Dole, Secretary of Transportation, XC009812

73. Attached as Exhibit 72 hereto is a true and correct copy of the General Principles of Aviation Security: Airport Security General § 29:3.

74. Attached as Exhibit 73 hereto is a true and correct copy of United Airlines Security Training Manual, July 12, 2001, at UAL002706.

75. Attached as Exhibit 74 hereto is a true and correct copy of *Disruptive Passengers and Carry on Baggage*, Statement of Robert P. Warren, Air Transportation Association, (June 11, 1998).

76. Attached as Exhibit 75 hereto is a true and correct printout from the FAA Web Site, available at www.faa.gov/about/mission/activities.

77. Attached as Exhibit 76 hereto is a true and correct printout from Boeing's Web Site, available at http://www.boeing.com/commercial/safety/government_role.html.

We declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated: May 25, 2007

s/Robert A. Clifford
ROBERT A. CLIFFORD

s/Gregory P. Joseph
GREGORY P. JOSEPH

s/Marc S. Moller
MARC S. MOLLER

s/Ronald L. Motley
RONALD L. MOTLEY

s/Richard A. Williamson
RICHARD A. WILLIAMSON